

PAUL, WEISS, RIFKIND, WHARTON & GARRISON  
1615 L STREET, NW WASHINGTON, DC 20036-5694

TELEPHONE (202) 223-7300  
FACSIMILE (202) 223-7420

171/15186  
DOCKET FILE COPY  
1285 AVENUE OF THE AMERICAS  
NEW YORK, NY 10019-6064

199, BOULEVARD SAINT-GERMAIN  
75007 PARIS, FRANCE

AKASAKA TWIN TOWER  
17-22, AKASAKA 2-CHOME  
MINATO-KU, TOKYO 107, JAPAN

SUITE 1910 SCITE TOWER  
22 JIANGUOMENWAI DAJIE  
BEIJING, 100004  
PEOPLE'S REPUBLIC OF CHINA

13TH FLOOR, HONG KONG CLUB BUILDING  
3A CHATER ROAD CENTRAL, HONG KONG

EX PARTE OR LATE FILED

JEFFREY H. OLSON  
COMMUNICATIONS COUNSEL  
(202) 223-7326

May 22, 1998

RECEIVED

MAY 22 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Via Hand Delivery**

Magalie Roman-Salas, Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: Ex Parte Notice, MM Docket No. 97-217 File No.  
RM-9060 and MM Docket No. 97-234/GC Docket  
No. 92-52/GEN Docket No. 90-624

Dear Ms. Salas:

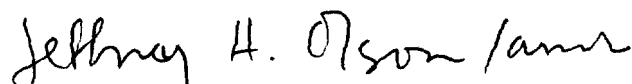
On May 20, 1998, Patrick Gossman and Kent Voigt of the Detroit-area Community Telecommunications Network and Jeffrey H. Olson of Paul, Weiss, Rifkind, Wharton & Garrison met with Charles Dziedzic, Michael Jacobs, Clay Pendarvis and David Roberts of the Mass Media Bureau regarding the above-referenced matters. In addition, on May 21, 1998, Patrick Gossman and Kent Voigt of the Detroit-area Community Telecommunications Network and Jeffrey H. Olson and Aseel M. Rabie of Paul, Weiss, Rifkind, Wharton & Garrison met with Jane Mago of the Office of Commissioner Powell, Rick Chesson of the Office of Commissioner Tristani, Commissioner Harold Furchtgott-Roth, Helgi Walker of the Office of Commissioner Furchtgott-Roth, Anita Wallgren of the Office of Commissioner Ness, and Susan Fox of the Office of Chairman Kennard regarding the above-referenced matters. The attached handouts were distributed.

In accordance with Section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. § 1.1206(b)(2), we are submitting an original and three copies of this notice.

No. of Copies rec'd 0415  
List A B C D E

Please contact either of the undersigned if you have any questions.

Respectfully submitted,

A handwritten signature in black ink that reads "Jeffrey H. Olson / amr". The signature is written in a cursive, flowing style.

Jeffrey H. Olson  
Aseel M. Rabie

cc: Charles Dziedzic  
Mass Media Bureau

Michael Jacobs  
Mass Media Bureau

Clay Pendarvis  
Mass Media Bureau

David Roberts  
Mass Media Bureau

Jane Mago  
Office of Commissioner Powell

Rick Chessen  
Office of Commissioner Tristani

Commissioner Harold Furchtgott-Roth

Helgi Walker  
Office of Commissioner Furchtgott-Roth

Anita Wallgren  
Office of Commissioner Ness

Susan Fox  
Office of Chairman Kennard

**DETROIT AREA**  
**COMMUNITY TELECOMMUNICATIONS NETWORK**

DETROIT BOARD OF EDUCATION  
DETROIT EDUCATIONAL TELEVISION FOUNDATION  
MACOMB INTERMEDIATE SCHOOL DISTRICT  
OAKLAND INTERMEDIATE SCHOOL DISTRICT  
WAYNE REGIONAL EDUCATIONAL SERVICE AGENCY  
WAYNE STATE UNIVERSITY

## WE ARE ESTABLISHED, LONG STANDING EDUCATIONAL PROVIDERS

- Early operations by Wayne State and Detroit Schools began in mid-1960s.
- Detroit area Community Telecommunications Network: not-for-profit, joint operations for K-12 and higher education formed in 1989.
- 24 hrs/day, 7 days/week operation.
- 150 receive sites and growing.
- Several channels carried into homes via local cable companies.
- Cover 40% of K-12 in State of Michigan (~ 850,000 students).
- Higher ed (WSU's 32,000 students) and other students of 14 college consortium.
- 14 ITFS channels, 4 MMDS channels, applications in for 2 remaining ITFS channels.
- Fiber optic links to Wayne, Oakland and Macomb Intermediate School Districts, Schoolcraft College and Wayne State University for programming feeds.
- Lease channel capacity to People's Choice Television, looking for joint education/entertainment package that will extend education's reach into homes.
- Moving into wireless Internet for interactive multimedia and other resources.

## WE NEED RESPONSIBLE MOVEMENT ON TWO-WAY

- Cable companies increasing number of channels, but decreasing educational access.
- We need alternative access into homes, hence the lease to PCTV.
- Analog video package dropped by PCTV as non-viable.
- Digital video package not certain because of costs and trees.
- Cellular configuration is essential for access to both school buildings and homes.

## WHAT WE ENVISION FOR EDUCATION

- Two-way cellularized architecture could solve several problems and get affordable access into homes.
- High-speed Internet will serve, not as content, but as carrier for instructional video, interactive multimedia, teleconferencing, student/instructor chat rooms, e-mail.

## WHAT CONCERNS US AND WHAT WE NEED FROM FCC

- Protect Education -- Move ahead, but be careful of what regulations allow.
- ITFS/MMDS contracts alone are not sufficient protection for ITFS future growth.
- A real danger is that educational services may, de facto, become secondary to commercial services in terms of interference protection and network architecture, thereby thwarting further development of the educational systems.

## SPECIFICS

- Move on TWO-WAY -- but in a way that protects existing ITFS and encourages system growth: real interference protection; ability to use cellularized architecture.
- ITFS should have at least PSA protection, regardless of leasing status.
- Need to be able to add new sites, not be trapped with currently registered receive sites.
- NO ITFS AUCTIONS!

EX PARTE OR LATE FILED

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 309(j)	)	MM Docket No. 97-234
of the Communications Act	)	
-- Competitive Bidding for Commercial	)	
Broadcast and Instructional Television	)	
Fixed Service Licenses	)	
	)	
Reexamination of the Policy	)	GC Docket No. 92-52
Statement on Comparative	)	
Broadcast Hearings	)	
	)	
Proposals to Reform the Commission's	)	GEN Docket 90-264
Comparative Hearing Process to	)	
Expedite the Resolution of Cases	)	

RECEIVED

MAY 22 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: The Commission

**REPLY COMMENTS OF THE  
COMMUNITY TELECOMMUNICATIONS NETWORK**

The Community Telecommunications Network ("CTN") hereby replies  
to various of the Comments filed in response to the above-captioned Notice of  
Proposed Rulemaking ("NPRM").<sup>1/</sup>

**I. INTEREST OF CTN**

CTN is a nonprofit corporation founded in 1989 by the Instructional  
Television Fixed Service ("ITFS") licensees in the Detroit, Michigan, area listed

---

<sup>1/</sup> In the Matter of Implementation of Section 309(j) of the Communications Act --  
Competitive Bidding for Commercial Broadcast and Instructional Television  
Fixed Service Licenses, FCC 97-397, released November 26, 1997.

below.<sup>2/</sup> CTN was created to coordinate the relevant activities of these licensees, including the construction, operation and maintenance of colocated transmission and production facilities. In addition, CTN acts as the interface point between these licensees and the Detroit area wireless cable operator; CTN leases excess capacity from its individual members and subleases capacity to the wireless cable operator.

Some members of CTN have operated extensive ITFS systems since well before the Commission's 1983 effort to reinvigorate the MDS industry by making new channel capacity available (both through the reallocation of the E and F Groups and through permitting the leasing of excess ITFS channel capacity).<sup>3/</sup> Indeed, even the most recently established systems that operate under the CTN umbrella were licensed at least five years prior to the establishment of a relationship with a wireless cable operator. In short, the scope of the Detroit area's ITFS operations (including the number and geographic distribution of receive sites, the number of students served, and the diversity of courses and programs offered) is quite extensive, and demonstrates a commitment to the use of television for instructional purposes that predates and transcends more recent attempts to facilitate the use of these channels for commercial purposes.

---

<sup>2/</sup> CTN's members (and their call signs) are as follows: Detroit Educational Television Foundation (WHR915); Detroit Public Schools (KTB98); Macomb Intermediate School District (WHR914); Oakland Intermediate School District (WHR508); Wayne County Regional Educational Service Agency (WHR916); and Wayne State University (WAK57).

<sup>3/</sup> Amendment of Parts 2, 21, 74 and 94 of the Commission's Rules and Regulations in Regard to Frequency Allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service, 94 F.C.C.2d 1203 (1983) ("1983 Report and Order").

**II. THERE IS NO STATUTORY BASIS WHATSOEVER FOR SUBJECTING MUTUALLY EXCLUSIVE ITFS APPLICANTS TO AUCTIONS NOR ANY RATIONAL PUBLIC POLICY BASIS FOR DOING SO.**

With one exception, the commentators that address the issue are unanimous that there is no legal basis or policy justification for imposing auctions on mutually exclusive ITFS applicants.<sup>4/</sup> CTN fully supports this conclusion. Put simply, had Congress intended to require financially strapped educational institutions -- usually financed by state or local tax revenues of one form or another -- to contribute those education tax dollars to the U.S. Treasury in order to receive a heretofore free ITFS license, it would have said so rather explicitly. It is patently obvious that it did not, either directly in the statute or by reference in the legislative history.

Moreover, there is no independent policy reason for doing so. The record in this proceeding is devoid of any public interest rationale for so burdening educational institutions. The comparative criteria specified by 47 C.F.R. §74.913 for resolving instances of mutual exclusivity are fair and adequate for resolving cases of mutual exclusivity. The existing process places no undue burden on the applicants and can be rationally and expeditiously applied by the Commission.<sup>5/</sup>

---

<sup>4/</sup> See, e.g., Comments of ITFS Parties (Arizona Board of Regents, et al.); Comments of Indiana Higher Education Telecommunications System; Comments of the National ITFS Association; Joint Comments of the Board of Education of the City of Atlanta, et al.; Joint Comments of the Board of Trustees of Community Technical Colleges, et al.; Comments of the Corporation for Public Broadcasting; Comments of the School District of Palm Beach County, Florida; Comments of the Wireless Cable Association International, Inc.; Comments of BellSouth Corporation, et al.

<sup>5/</sup> The Hispanic Informational Telecommunications Network ("HITN") appears to be the sole party favoring auctions for ITFS applicants. It is, however, unable to make a remotely credible case for its position, either as to whether

(continued...)

### CONCLUSION

As a result of the foregoing, and for the reasons set forth by the parties identified in n.4, supra, the Commission should not subject ITFS licensees to the auction process.

Respectfully submitted,

COMMUNITY TELECOMMUNICATIONS NETWORK

By: \_\_\_\_\_  
 Jeffrey H. Olson  
 PAUL, WEISS, RIFKIND, WHARTON & GARRISON  
 1615 L Street, N.W., Suite 1300  
 Washington, D.C. 20036  
 Telephone: (202) 223-7300  
 Facsimile: (202) 223-7420

Its Attorneys

Dated: February 17, 1998

---

<sup>5/</sup> (...continued)  
 Section 309(j) mandates such a result or with regard to whether it would represent rational public policy.

It must be recalled that HITN was one of the "national filers" that first emerged in the mid-1980s ITFS "land rush." These parties filed ITFS applications in all major markets, receiving financial backing from several now-defunct wireless cable entrepreneurs. In response to those national filers, the Commission adopted rules to ensure -- as reflected in the existing ITFS comparative factors -- a solid nexus between ITFS licensees and the local educational community. HITN generally opposed these Commission efforts. Thus, it is no surprise that HITN should now be willing to trade the existing system, with its insistence on solid ties to the local educational community and the delivery of real instructional services, for one driven by monetary considerations.